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Supreme Court of the United States

OCTOBER TERM, 1935

No. [redacted] 37

THE BRITISH AMERICAN OIL PRODUCING COMPANY, A CORPORATION,

Petitioner,

vs.

THE BOARD OF EQUALIZATION OF THE STATE OF MONTANA, AND JAMES H. STEWART, JOHN J. GREENE, AND SAM D. GOZA, MEMBERS OF THE STATE BOARD OF EQUALIZATION OF THE STATE OF MONTANA,

Respondents

Brief of Respondents

RAYMOND T. NAGLE,
Attorney General,

JEREMIAH J. LYNCH,
First Assistant Attorney General,

Counsel for Respondents.

[redacted], HELENA

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Supreme Court of the United States

OCTOBER TERM, 1935

No. 953

THE BRITISH AMERICAN OIL PRODUCING COMPANY, A CORPORATION,

Petitioner,

vs.

THE BOARD OF EQUALIZATION OF THE STATE OF MONTANA, AND JAMES H. STEWART, JOHN J. GREENE, AND SAM D. GOZA, MEMBERS OF THE STATE BOARD OF EQUALIZATION OF THE STATE OF MONTANA,

Respondents;

THE BLACKFEET INDIAN TRIBE,

Intervener.

Brief of Respondents

ARGUMENT.

LEASE EXECUTED PURSUANT TO AUTHORITY OF ACT OF MAY 29, 1924 (43 Stat. 244).

The lease in question is denominated an "Oil and Gas Mining Lease, Tribal Indian Land", and was made under the authority of 43 Stat. 244 (25 U. S. C. A., Sec.

398), according to its own terms (R. 7). As the lease shows (R. 7) and the complaint avers (R. 2) and as Section 398 in fact requires, the lease was entered into with the consent of the Blackfeet Tribal Council. That it was proper to proceed under the provisions of Section 398 cannot be doubted. The oil and gas, as well as all other minerals, were reserved to the United States for the benefit of the Blackfeet Tribe of Indians (41 Stat. 17) from the trust patents issued to the individual members of the tribe, and to the extent of that reserved interest the Indian lands, of necessity, remained unallotted. These mineral resources are not attached to the land, allotted in severalty, but these rights and reserves are tribal interests and not interests in severalty. The mineral reserves were not divided in severalty. The owner of the land of such a Blackfeet allotment does not individually own the minerals thereunder. These reserves remain as tribal property. There is no difference in principle between a lease of minerals underneath unallotted lands and a lease of minerals underneath allotted lands from which the minerals have been reserved. In the one case, as in the other, the minerals are held by the United States for the benefit of the Blackfeet Indians in their tribal capacity. That must have been the view which Congress entertained when it enacted Section 398. From the language of the section it is obvious that Congress intended that the production of oil and gas from areas underneath restricted lands, that is lands for which trust patents had issued, should be placed in the same category as the production of oil and gas from areas underneath unrestricted lands so far as taxation by the state is concerned. If the section was meant to apply only to "unallotted lands", as the term is ordinarily understood, why was Congress at pains to provide that the tax

shall not become a lien or charge of any kind or character against the land of the Indian owner? Surely, so far as unallotted lands are concerned, it was not necessary to insert a provision of that kind in order to protect the tribe or any member of the tribe against tax liens.

Mid-Northern Oil Co. v. Walker, 268 U. S. 45, 45 S. Ct. 440, 69 L. Ed. 841.

In the brief of petitioner it is argued: "Had this Act been intended to include lands, the surface of which was allotted, logically the lease would have provided for reimbursement to the Indian owner for damages occasioned to fences, buildings, crops, etc., by reason of operations for oil and gas development. No such provision is found in the lease." But the lease does provide (R. 9) that "the lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in his occupancy or use, take good care of the same." Any violation of this condition on the part of the lessee or its assignee would entitle the Indian owner to compensatory damages at least.

Section 398 has been construed by the executive department of government charged with its administration. The courts have uniformly held that the construction placed upon a statute by the officer, board or department charged with the duty of administering it is entitled to great weight and should not be overturned except for cogent reasons.

59 Corpus Juris 1025;

United States v. Jackson, 280 U. S. 183, 50 S. Ct. 143, 74 L. Ed. 361;

Federal Land Bank v. Warner, 292 U. S. 53, 54 S. Ct. 571, 78 L. Ed. 1120;

Globe Indemnity Co. v. Bruce, 81 Fed. (2d) 143.

MINERALS IN PLACE.

Minerals in place are land.

Huss v. Jacobs, 210 Pa. 145, 59 Atl. 991;
Selvey v. Grafton Coal & Coke Co., 72 W. Va. 680, 79 S. E. 656;
Kinder v. LaSalle County Carbon Coal Co., 301 Ill. 362, 133 N. E. 772;
Young v. Young, 307 Mo. 218, 270 S. W. 653, 39 A. L. R. 734;
Stern v. Great Southern Land Co., 148 Miss. 649, 114 South. 739.

A STATE MAY, WITH THE CONSENT OF CONGRESS, TAX AN INSTRUMENTALITY OF THE UNITED STATES.

A state may, with the consent of Congress, lay a tax on the instruments, means or agencies, provided or selected by the government of the United States to enable it to carry into execution its legitimate powers and functions. National banks are a good example of the exercise of such consent.

61 Corpus Juris 371;
2 Cooley on Taxation, Sec. 606, p. 1286;
Mid-Northern Oil Co. v. Walker, 65 Mont. 414, 211 Pac. 353, aff. 268 U. S. 45, 69 L. Ed. 841.

Congress has the power to grant to the states the right to tax public property or property in which the United States retains such an interest as would otherwise exempt it, and where this is done no express acceptance by the state of the authority conferred is essential to the exercise thereof.

61 Corpus Juris 361;
Central Pacific Railroad Co. v. Nevada, 162 U. S. 512, 16 S. Ct. 885, 40 L. Ed. 1057, aff. 21 Nev. 247, 30 Pac. 686.

TAX ON NET PROCEEDS OF MINES IS TAX ON PERSONAL PROPERTY.

The net proceeds of mines being themselves personal property, the tax thereon cannot be other than a personal property tax.

Section 2088, Revised Codes of Montana 1921;
Birney v. Warren, 28 Mont. 64, 72 Pac. 293;
Board of Com'rs. of Sweetwater County v. Bernardin, 74 Fed. (2d) 809, cert. denied 295 U. S. 731, 79 L. Ed. 1680.

It is in effect an ad valorem tax on personal property and for that reason; if for no other, does not violate the rule laid down in *Choctaw, O. & G. R. Co. v. Harrison*, 235 U. S. 292, 35 S. Ct. 27, 59 L. Ed. 234.

1 Cooley on Taxation, Sec. 52, p. 143;
Byrne v. Fulton Oil Co., 85 Mont. 329, 278 Pac. 514;
Pingree v. Auditor General, 120 Mich. 95, 78 N. W. 1025.

Section 4 of the Enabling Act and the second paragraph of Ordinance No. 1 exempt certain Indian lands from taxation but do not include personal property owned by Indians. In *Three Foretops v. Ross*, 73 Mont. 6, 235 Pac. 334, the court held that horses belonging to a tribal Indian were not subject to taxation by the state, but this was on the theory that ownership thereof was acquired directly or indirectly through the use of government supplies and money and therefore the property was charged with a trust.

INDIAN LANDS NOT AFFECTED BY SECTION 2 OF ARTICLE XII OF THE MONTANA CONSTITUTION.

In *British-American Oil Producing Co. v. Board of Equalization*, 54 Pac. (2d) 129, the Supreme Court of Montana construed Section 2 of Article XII of the Montana Constitution and held that Indian lands do not come within its purview. This construction is binding upon the court.

25 Corpus Juris 832;
Coombes v. Getz, 285 U. S. 434, 52 S. Ct. 435, 76 L. Ed. 866.

Property held by the United States as trustee for the benefit of others is not the kind of property which is exempt from taxation under the provisions of said Section 2.

61 Corpus Juris 418;
2 Cooley on Taxation, Sec. 629, p. 1324;
People v. University of Illinois, 377 Ill. 377, 159 N. E. 811;
Security Savings & Trust Co. v. Lane County, 53 Pac. (2d) 33;
State v. Board of Com'rs, 53 S. D. 609, 222 N. W. 583.

Respectfully submitted,

RAYMOND T. NAGLE,
Attorney General,

JEREMIAH J. LYNCH,
First Assistant Attorney General,

Counsel for Respondents.